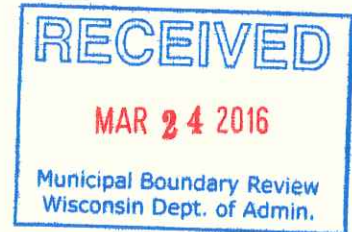


**DANIEL S. DIEHN**  
**ATTORNEY AT LAW**

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March 21, 2016

Department of Administration  
P.O. Box 7864  
Madison, WI 53707-7864

Dear Sir or Madam:

Enclosed please find the Resolution and Cooperative Plan that is being jointly submitted for the Town of Lincoln, Town of Burnside and City of Independence. This Plan is being submitted pursuant to Section 66.0307, Wis. Stats.

Please feel free to contact me with any questions or comments.

Sincerely,

DANIEL S. DIEHN, S.C.

A handwritten signature in dark ink, appearing to read "D. Diehn".

Daniel S. Diehn  
Attorney for Towns of Lincoln and Burnside  
DSD/jlw

Enclosure

Cc: Jack Speerstra, Town of Lincoln (w/enclosure copy-via email only)  
Fred Boe, Town of Burnside (w/enclosure copy-via email only)  
LaVerne Michalak, Attorney for City of Independence (w/enclosure copy- via email only)

**RESOLUTION**  
**Cooperative Plan Agreement with the Towns of Lincoln and Burnside**

**WHEREAS**, an annexation of land on August 19, 2014 by the City of Independence was challenged in Court by the Towns of Lincoln and Burnside, and

**WHEREAS**, in February 2015 the City and Towns entered into a stipulation under Section 66.0225 Wis. Stats. to settle the Court action through development of a Cooperative Plan under Section 66.0307, and

**WHEREAS**, when the stipulation was approved by the Court, the City adopted a Resolution of intent on May 12, 2015 to participate in the preparation of a Cooperative Plan and the Towns then adopted a similar Resolution, and

**WHEREAS**, the Towns' draft of a proposed Cooperative Plan was reviewed and discussed at a public hearing held on October 1, 2015, followed by revisions and corrections made by legal counsel for the Towns and City, and


**WHEREAS**, the Towns have now approved the revised draft of the Cooperative Plan and the City Council has reviewed and discussed this draft, and

**WHEREAS**, it appears that a reference should be made to the Town of Arcadia at Section 4.01(a) of the draft as shown on the attached Cooperative Plan agreement, and

**WHEREAS**, the attached Cooperative Plan agreement as revised appears to be consistent with the February 2015 stipulation and in the best interest of the City.

**THEREFORE, BE IT RESOLVED**, that the attached Cooperative Plan is approved and shall be forwarded to the Wisconsin Department of Administration for its review and approval as required by Section 66.0307(5) if the Towns approve the change at Section 4.01(a) as attached.

Dated this 7<sup>th</sup> day of March, 2016.

  
\_\_\_\_\_  
Lenice Pronschinske  
Independence City Clerk

The above Resolution was adopted by a vote of 4 in favor and 3 opposed this 7<sup>th</sup> day of March, 2016.

**TOWN OF LINCOLN AND TOWN OF BURNSIDE/CITY OF INDEPENDENCE  
COOPERATIVE PLAN AGREEMENT  
UNDER SECTION 66.0307, WISCONSIN STATUTES**

The Town of Lincoln, Trempealeau County, Wisconsin, a Wisconsin municipality with its office located at W20744 State Road 121, Whitehall, Wisconsin (hereinafter "Lincoln"), the Town of Burnside, Trempealeau County, Wisconsin, a Wisconsin municipality with its office located at W24152 Starwood Lane, Independence, Wisconsin (hereinafter "Burnside"), and the City of Independence, a Wisconsin municipality with its office located at 23688 Adams Street, Independence, Wisconsin (hereinafter "Independence") enter into this Cooperative Plan (hereinafter "Cooperative Plan"), subject to the approval of the State Department of Administration, under the authority of Section 66.0225 and Section 66.0307, Wisconsin Statutes.

**WHEREAS**, Section 66.0307, Wisconsin Statutes, authorizes municipalities to determine the boundary lines between themselves upon approval of a Cooperative Plan by the State Department of Administration; and,

**WHEREAS**, the purpose of the Cooperative Plan is cited in Section 66.0307(3)(b), Wisconsin Statutes as follows:

(b) Purpose of Plan. The Cooperative Plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the territory covered by the Plan which will, in accordance with existing and future needs, best promote public health, safety, morals, order, convenience, prosperity or the general welfare, as well as the efficiency and economy in the process of development.

and,

**WHEREAS**, Section 66.0307(2)(a through d) of the Wisconsin Statutes requires that Cooperative Plans be organized around "options" for future boundary changes. These options, listed below, specify how boundary changes will occur over the "boundary plan" term:

- (a) That specified boundary line changes shall occur during the planning period and the approximate date by which such changes shall occur.
- (b) That specified boundary line changes may occur during the planning period and the approximate dates on which the changes occur.
- (c) That required boundary line changes under Paragraph (a) or an option boundary line change under Paragraph (b) shall be subject to the occurrence of conditions as set forth in the Cooperative Plan.
- (d) That specified boundary lines may not be changed during the planning period.

This Cooperative Plan is organized around options “c” and “d”; and

**WHEREAS**, annexation of land from Lincoln and Burnside into Independence places Lincoln and Burnside at the mercy of the annexing property owner with respect to the timing, location, provision of public services, size and shape of annexed territory; and,

**WHEREAS**, Lincoln, Burnside and Independence enter into this Cooperative Plan to determine their respective boundaries and to guide and accomplish a coordinated, adjusted and harmonious development of the territory covered by the Cooperative Plan; and,

**WHEREAS**, on August 19, 2014, Independence annexed property from both Lincoln and Burnside and Lincoln and Burnside initiated litigation challenging such annexation; and,

**WHEREAS**, Lincoln, Burnside and Independence entered into a Stipulation settling such litigation and requiring the execution of a Cooperative Boundary Agreement; and,

**WHEREAS**, Such Stipulation was approved by the Trempealeau County Circuit Court Judge; and,

**WHEREAS**, Lincoln, Burnside and Independence enter into this Cooperative Plan for the purposes of resolving existing litigation and establishing permanent boundaries, assuring orderly development, and coordinating the provision of certain basic services; and,

**WHEREAS**, this Cooperative plan does not adversely affect the exercise of Trempealeau County zoning, platting, and the general powers of Trempealeau County in the Towns of Lincoln and Burnside; and,

**WHEREAS**, this Cooperative Plan was developed following a review of existing regional, county and local plans; and,

**WHEREAS**, Lincoln, Burnside and Independence have held a joint public hearing on the Cooperative Plan noticed under Wisconsin Statute 66.0307(4)(b) on October 1, 2015 in which comments were received and which comments are reflected in this Cooperative Plan.

## **WITNESSETH:**

The Town of Lincoln, Town of Burnside and City of Independence enter into this Cooperative Plan under the provisions and authority of (i) Section 66.0225 of the Wisconsin Statutes, and also (ii) Section 66.0307 of the Wisconsin Statutes. Lincoln, Burnside and Independence petition the State of Wisconsin Department of Administration for approval of this Cooperative Plan, in accordance with the statutory procedures and time frames specified under Section §66.0225 and 66.0307 of the Wisconsin Statutes.

### **SECTION 1 PARTICIPATING MUNICIPALITIES**

**1.01** This Cooperative Plan applies to the Town of Lincoln, Town of Burnside and the City of Independence in Trempealeau County, Wisconsin, which respective municipal boundaries on the date of approval of this Cooperative Plan by the Parties are shown on the map found in Attachment B. This Cooperative Plan is being adopted by Lincoln, Burnside and Independence pursuant to both of the provisions of Sections 66.0025 and 66.0307 of the Wisconsin Statutes.

### **SECTION 2 CONTACT PERSON**

**2.01** The following persons are empowered to speak for their municipality respecting this Cooperative Plan: For the Town of Lincoln: the Town Chairperson, for the Town of Burnside: the Town Chairperson and for the City of Independence: the City Mayor.

### **SECTION 3**

**3.01 Establish boundaries between the Village and the Town, thereby eliminating annexation disputes.** Like many towns located next to incorporated municipalities, Lincoln and Burnside have been subjected to the loss of territory to multiple cities by multiple current and potential annexations. Because of the lack of control over, and involvement, in the annexation process, the annexations have created a boundary which is difficult for Lincoln, Burnside and Independence to service. A defined border will allow Lincoln, Burnside and Independence to engage in land use planning, to avoid disputes, to provide current services, and to plan for future infrastructure improvement. The boundary to be established by this Cooperative Agreement is set as the boundary between the respective municipalities as they existed on February 2, 2015, shown on Attachment B.

**3.02 Future Annexation.** Independence may annex property from Lincoln or Burnside of no more than sixty (60) acres per Town per year in the normal course of its development and growth for purposes other than non-metallic mining or for infrastructure in support of non-metallic mining.

**3.02(a)** Non-metallic mining and supporting uses or infrastructure present unique issues for Lincoln, Burnside and Independence because of the unique characteristics of the industry. Careful planning is required to properly plan and coordinate effects on road maintenance, traffic patterns, noise and environment conditions. Therefore, any annexation to Independence for such purposes shall require consultation and consent from both Independence and the Town from which the territory is proposed to be annexed.

**3.02(b)** Larger annexations have greater effects on towns and require additional planning and coordination of services. Any annexation in excess of sixty (60) acres shall require consultation and consent from both Independence and the town from which the territory is proposed to be annexed.

**3.02(c)** Consents required for annexations under this agreement shall be in the form of a majority vote of the Town Board or Town Boards from which annexation is proposed, unless otherwise required by State law.

**3.03 Road Maintenance.** As the result of recent annexations and other factors, clarification is needed as to responsibility for various streets and roads. Burnside shall be responsible for plowing, maintaining and mowing the ditches for that portion of Glaunert Lane located within Independence. Independence shall be responsible for plowing, maintaining and mowing the ditches for that portion of Troug Lane located within Burnside. Lincoln shall be responsible for plowing, seal coating, mowing the ditches and ultimately rebuilding that portion of River Valley Road within Lincoln.

**3.03(a)** Independence shall pay an annual fee to Lincoln for the maintenance of River Valley Road. Such payment shall be due on October 1<sup>st</sup> of each year commencing in 2016 and is for the proceeding twelve month period. The annual payments for 2016, 2017 and 2018 shall be TWO THOUSAND FIVE HUNDRED EIGHTY SIX DOLLARS AND NO/100THS (\$2,586). The payment shall be adjusted every three (3) years based upon changes to the Consumer Price Index.

#### **SECTION 4 TERM AND EFFECTIVE DATE**

**4.01** This Cooperative Agreement shall go into effect on the date the last of Lincoln, Burnside and Independence approve this Agreement and shall remain in effect for a period of twenty (20) years from the date this Agreement goes into effect.

**4.01(a)** Should any litigation result in a final judicial determination, after all Appeals have been exhausted, that any part of Independence's Annexation from Lincoln, Burnside or Town of Arcadia on or about August 19, 2014 is invalid, this Cooperative Agreement shall immediately terminate.

## **SECTION 5 REIMBURSEMENT OF COSTS**

**5.01** No party is entitled to the receipt of cost reimbursements, including attorney fees incurred prior to the date this Agreement takes effect, in connection with the challenge by Lincoln and Burnside to the August 2014 annexation by Independence. In the event this Agreement is terminated by virtue of Section 4.01(a), herein, responsibility for costs and fees incurred following the date of such termination shall be as determined by law.

## **SECTION 6 WAIVER**

**6.01** Lincoln, Burnside and Independence hereby waive any right each may have to commence or maintain any civil action or other proceedings to contest, invalidate or challenge this Cooperative Agreement or any of the actions required or contemplated by this Cooperative Agreement, or to take any actions, either directly or indirectly, to oppose this Cooperative Agreement or any actions required or contemplated by this Cooperative Agreement.

## **SECTION 7 AMENDMENT**

**7.01** After this Cooperative Agreement is fully adopted and approved under the law under the provisions of Section 66.0307 of the Wisconsin Statutes, then this Cooperative Agreement may be amended pursuant to the provisions of Section 66.0307(8) of the Wisconsin Statutes. A party may not arbitrarily withhold its consent to any amendment.

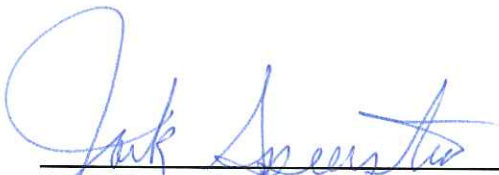
## **SECTION 8 GOOD FAITH AND FAIR DEALING**

**8.01** The parties hereby acknowledge that this Cooperative Agreement imposes on them a duty of good faith and fair dealing.


**SECTION 9  
SEVERABILITY**

**9.01** The provision of this Cooperative Agreement, and the individual parts of each such provision, shall be severable. In the event that any provision of this Cooperative Agreement, or any part thereof, is held by a court of competent jurisdiction to be invalid or ineffective, the balance of this Cooperative Agreement shall survive. In such event, the parties shall promptly meet to discuss how they might satisfy the intent of this Cooperative Agreement by alternative means.


**9.02** The parties shall use their best efforts to find, design and implement a means of successfully accomplishing the intent of this Cooperative Agreement. If necessary, the parties shall negotiate appropriate amendments of this Cooperative Agreement to maintain, as closely as possible, the original terms, intent and balance of benefits and burdens of this Cooperative Agreement. In the event the parties are not able to reach agreement in such situation, either party may, by thirty (30) days written notice to the other, require submission of such dispute to an impartial arbitrator, to be mutually selected by the parties during such thirty (30) day period, for binding arbitration. Lincoln, Burnside and Independence shall promptly pay on an equal basis all fees and expense of the selected arbitrator.

  
\_\_\_\_\_  
Jack Speerstra, Chairman  
Town of Lincoln

Dated: March 18, 2016

  
\_\_\_\_\_  
Fred Boe, Chairmain  
Town of Burnside

Dated: March 18, 2016

  
\_\_\_\_\_  
Robert Baecker, Mayor  
City of Independence

Dated: March 17, 2016